



## BOARD OF APPEAL

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76-69

Petition of Wellesley Glen Associates

The Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:00 p.m. on November 18, 1976, on the application of Wellesley Glen Associates, requesting a Comprehensive Permit to construct two six-story buildings, which will provide 178 subsidized low and moderate income housing units, on Lot "A", a portion of land now owned by Dana Hall Schools, located between Grove Street and Cameron Street. Said request was made under the provisions of Massachusetts General Laws, Chapter 40 B, Section 20-24.

Board members present were: Francis L. Swift, Chairman, F. Lester Fraser and William O. Hewett, and Associate members Franklin L. Parker and William E. Polletta. Henry H. Thayer was not in attendance due to a conflict of interest.

Because of the unexpected large number of those attending the hearing, the meeting was transferred from the Town Hall to the Hunnewell School Hall on Cameron Street.

The opening meeting adjourned at 10:30 p.m. and at that time the Chairman announced that the meeting would reconvene at the Hunnewell School Hall at 8:00 p.m. on Thursday evening, December 2, 1976. The second hearing continued until 10:00 p.m. when the

Chairman announced it would adjourn and reconvene at 8:00 p.m. on Wednesday evening, December 8, 1976, at the Hunnewell School Hall. The hearing continued at the designated time and place and concluded at 10:00 p.m. The Chairman at that time announced that the Board would take the case under advisement and review all the evidence submitted. It would come to its decision, he stated, within the forty-day period required under the provisions of Chapter 40 B, Section 20-24 of the General Laws, or a request would be made for an extension of time under the applicable provision of the law.

At the hearing, Alexander H. McNeil, General Partner of Wellesley Glen Associates, introduced the following members of his development team:

Robert F. Gundersen, Esquire, Ralph I. Williams and Peter Paige, Architects, William R. Roop, III, Vice President, Richard C. Crowell, Vice President of Sturdy Oak Construction Company, Inc., proposed contractor for the Wellesley project, Paul B. Rhude, Vice President of McNeil Management & Services, Inc. and James W. Haley, Professional Engineer.

Mr. McNeil stated that for several months the Associates have been working with Town officials in an attempt to bring about a quality housing complex to help meet the substantial housing needs of elderly persons. He expressed his desire to work closely with

the Board of Appeal as well as the elected Town officials, in developing a plan which will meet the needs of the community and be in the best interest of the Town.

He submitted for insertion into the record of the hearing and as a supplement to the application, dated September 14, 1976, a "Summary of Applicant's Presentation", consisting of 19 pages as well as four Exhibits.

Robert F. Gundersen, Esquire, presented the legal issues involved and submitted a suggested form of conditions for the Board to follow. He discussed the case of the Town of Hanover v. Housing Appeals Committee in the Department of Community Affairs (1973) 363 Mass. 339. 294 N.E. 2d 393, and pointed out that the Supreme Judicial Court of Mass. found that the Hanover Board could over-ride local requirements and regulations, including zoning ordinances or by-laws, which are not consistent with local needs and which hamper the construction of low and moderate income housing. He covered in detail the application to construct 178 units of low and moderate income housing and pointed out the obligation the Town of Wellesley has to meet its minimum housing needs. He further stated that the applicant will present to the Board clear and substantial evidence, including written materials, architectural plans and exhibits, and expert testimony to justify the Board's approval of the application not only because of the demonstrated fact of housing need both regionally



and locally, but also because the applicant's proposed housing plan responds affirmatively to those specific statutory planning concerns.

William R. Roop, III, Vice President, stated that McNeil & Associates, Inc., was founded by Alexander H. McNeil in 1956 as a real estate and development company, and in 1973, property management functions were transferred to the newly formed McNeil Management and Services, Inc. which is currently managing approximately 1,000 apartment units in Boston and suburbs.

He explained that he had worked with local boards and referred to the Comprehensive Plan of 1969, which is a study made for the Town of Wellesley by a Committee appointed by the Board of Selectmen at that time. The plan, he stated, favored the site involved for moderate-cost housing for the elderly. He covered in depth all aspects of the applicant's proposal and stressed the Town's need for the proposed building complex for which a Comprehensive Permit is being requested.

Felix Juliani, Chairman of the Board of Selectmen, read a statement from the Board in which it stated that the Selectmen believe the project is in need of modification and if the specific plan is so modified, the question of whether the location is correct could be answered in the affirmative. The statement covered the question in detail of density, building height,



traffic and parking. It further pointed out that before any approval of this project is given, a complete in-depth traffic study should be undertaken by a consultant to be hired by the Town and paid for by the proponents which will provide the Town with a professional analysis of whether the street system and particularly the traffic signal system in Wellesley Square can accommodate the expected influx of pedestrians and motorists and that this project, in its present state, will generate congestion.

Marilyn Fraser, Chairman of the Planning Board, stated that the Planning Board was prepared at that time to make only general recommendations on the proposal and that the Board would submit its full recommendations after the conclusion of the hearing. On December 23, 1976, the Planning Board submitted its detailed report. Its proposal, as modified in statements at the public hearing, is for 160 units (40 one-bedroom and 120 two-bedroom) for low and moderate income elderly families and individuals. It recommended that if the Board finds that a permit, such as Wellesley Glen Associates request under 774, is in order, then the permit should have the following conditions:

1. All of the housing units shall be reserved for low and moderate income elderly.
2. All vehicular access shall be to and from Grove Street.
3. The project shall be modified to comply with the requirements of an existing zoning district including:
  - a. Density
  - b. Usable Open Space

- c. Setbacks
  - d. Height
  - e. Parking
  - f. Comprehensive Plan Review
4. Approval shall be contingent on the developer's receipt of financing and subsidy commitment required under 774.
  5. Approval shall be contingent on 774 being in force at the time of issuance of building permit.

Speaking in favor of the request were representatives from the Council on Aging, Mrs. Robert H. Traylor, Chairman, Frank Shaw, Treasurer, Marjorie Glassman, Past Chairman and Jessie Melvin. All endorsed the proposal and offered their services to help in any way.

Juliette Fager expressed favor of the request and stated that she had visited two other projects that the petitioner had developed and found them to be landscaped nicely and that a spirit of community prevailed within the projects.

William Frederickson, stated that he felt that the request should be put before the Town Meeting to be voted upon as he felt that the issue was one of the most important to come before the Town in years.

Margaret W. Downs, Town Meeting member, asked if there was a precedent that municipalities offered to pay a portion of the purchase price of land for such projects.

Mary Graybar Barto, 85 Grove Street, outlined in detail her views and explained why she felt that the Grove Street - Cameron Street area is not the place for this project.

Freyda P. Koplow, 75 Grove Street, opposed the proposed project. She referred to a map which was contained in the housing study compiled in 1970 for the Board of Selectmen and pointed out that the site involved on Cameron Street was not recommended as a potential housing site for the elderly. In the report, she stated, it cited 62 sites on 152 acres and she did not feel that 25% of the units should go into one project. She further pointed out that four parcels of land owned by private educational institutions were not marked on the map as housing sites, although they were mentioned in the report as containing land which might be available at some future date.

Samuel Baldwin, opposed the request as he felt that the project would endanger the safety and health of the school children; the design of the structures would create high density, as in his opinion, 178 units are twice as many as should be allowed in Wellesley, and the increased traffic will create greater congestion on Cameron Street. He asked what security provisions had been made for the parking lot, whether an environmental impact statement had been made, how the project would be heated, payment for utility connections and whether a legal requirement could be made to make the project available to the elderly. He further stated that he would like to have Town Houses rather than the apartment units proposed and would like to know what is going to



happen to the Bardwell building, now owned by Dana Hall schools.

Richard Clayton, 8 Cross Street, president of the Hunnewell School P.T.A., stated that the proposed project presents an unwarranted and unacceptable danger to the children's safety on Cameron Street. Furthermore, he stated, its proposed density would place an unfair burden upon the Town, because it would stand as a mockery of an entirely justifiable Zoning By-law, and for the traffic congestion its inadequate parking design would generate in and around Wellesley Square.

Samuel A. Beattie, Principal of the Hunnewell School for the past nineteen years, expressed his concern for the safety of the children in the school, as he felt it would be very difficult to control the flow of traffic from the proposed apartment project.

Robert Avrom Goldberg, 75 Grove Street, opposed the proposed construction. In his nineteen-page statement, incorporated herein by reference, he referred to the Hanover and Concord cases and the construction that the Supreme Judicial Court made of Chapter 774. He pointed out that those cases were decided in March of 1973, and were the interpretation of the law at that time. Our Supreme Judicial Court, he stated, decides each case on its individual merit and in the instances of the Board of Appeals of Hanover and the Board of Appeals of Concord case, this was the Court's opinion as to the proper disposition in these cases. He agreed that this Board cannot arbitrarily deny the permit, but must examine and

take into consideration all the details of the proposal in the application and must consider the question of health and safety not only of the occupants of the project, but also, of the residents of the Town of Wellesley. He compared the request of Wellesley Glen Associates to the presentation of the Hanover and Concord cases as to number of units and land areas involved. He pointed out that the number of 178 units, presented by the petitioner, to be constructed on 3 1/2 acres of land is three times the number of units requested from the Board of Appeal of Concord which was for 60 units on 5 1/2 acres of land and twice as many units requested from the Board of Appeal in Hanover which was for 88 units on 10 acres of land.

He further referred to a recent Boston Globe article on South End tenants fighting HUD foreclosure. The article stated that Housing and Urban development over the past ten years had sold federally subsidized housing to private investors after the housing went into foreclosure; 35 others have now gone into foreclosure and 25 more are facing it within the next six months.

He concluded by recommending that if a comprehensive permit were to be issued that it contain such details and considerations that this Board of Appeal would determine necessary to have the project blend in with the community so as not to create any unnecessary pollution, nor an unbearable traffic situation, nor a safety question, not only for the tenants in the project but also

for the residents of the Town of Wellesley and the children attending the Hunnewell School.

Samuel A. Balkan, 85 Grove Street, presented a statement in opposition to the construction project and enumerated thirteen reasons why he did not feel that the proposal met the criteria laid down by the Supreme Court of Mass. in the case of the suit of Hanover and Concord against the low income housing projects proposed in their communities. He referred to the high density of the proposed project, the influx of vehicles, congestion resulting from increased traffic, inadequate parking spaces, and felt that all of these will endanger the safety and health of the children attending the Hunnewell School. He further questioned what the impact would be of this project on the adjoining Fuller Brook Reservation and asked if an Environmental Impact Statement had been filed for the project. He also pointed out that since at least 38% of the planned units have two bedrooms, and the developer cannot restrict occupancy in this project according to law, it can be expected that there will be some families with children, and additional services required. This, he felt, could over-burden the taxpayers of Wellesley. In conclusion, he questioned who would be financially liable or responsible for the continuing upkeep and proper maintenance of the buildings during their useful lifetime.

Ellen Staelin, 14 Tappan Road, Town Meeting member, suggested that the Town take the land for municipal use or for low and moderate income housing.



Benjamin Daniels, 75 Grove Street, questioned what assurance there was that the proposed project would be available only to the elderly citizens over 62 years of age. He referred to an advertisement appearing in the December 2, issue of the "Townsmen" in which the Wellesley Housing Authority sought applications for 133 units of low-income housing for the Weston Road and River Street projects, due to the projected vacancies. If this is true, he stated, where does the need exist. He also referred to the serious problem of density, safety to children as well as traffic congestion and undue pressure on the Town services and utilities.

Louise C. Bourginon, 14 Ingraham Road, also questioned how the proposed complex can be restricted to the elderly. While she was in favor of taking care of the elderly, she stated, she did not feel that the Wellesley Zoning By-laws should be violated.

Thomas Connelly, Director of the Wellesley Housing Authority, stated that at present there are only nine on the waiting list from Wellesley. However, he stated, that he wanted to replenish the roster of applicants as there are one or two vacancies per project per month. The list of applicants, he stated, could be given to McNeil and Associates, if the proposed project is approved and the Board of Selectmen approve.

Joseph T. Murphy, 17A Appleby Road, questioned the break-down of the cost per unit and felt that there should be more detailed information submitted and some indication of the proposed financing of the project and the agency's qualifications.

Albert Auburn, 33 Avon Road, stated that the petitioner has not as yet received approval from a financing agency, Massachusetts Housing or HUD, and suggested a deferment of the Board's decision until a cost analysis is submitted.

John Joseph Prybyla, 51 Crown Ridge Road, who made an intensive study of the proposed project, pointed out among many other things, the following sentence in the petitioner's application, "It is proposed that depending upon availability of subsidy and determination of local needs, that up to 30% of the elderly housing units could be available to persons above these income limits at market rentals." He, therefore, felt that because the petition was filed under Chapter 40 B, which applies only to subsidized low and moderate income housing, 30% or 54 units should be deleted from the petition. The applicant should not be allowed to slip in 54 unsubsidized units in violation of the Wellesley Zoning By-law. He also pointed out that even though the applicant refers to the project as one for elderly, the Federal program of 40B makes provision for elderly and handicapped of any age, and he recommended that prospective tenants complete the application for Tenant Eligibility and Recertification of the Housing and Urban Development office.

Richard O. Aldrich, 26 Lathrop Road, opposed the granting of the request. He stated that he had been a member of the Board of Appeal when the Wellesley Green plans were approved; that he was not opposed to apartments, and had approved other apartments within

the Town, which were not favored by others in the Town. However, he felt that density of this project is much too great and will result in overcrowding and dangerous to the safety of the children and townspeople. The site is not desirable for the proposed project, in his opinion, and many uses more compatible to the area with better utilization of the land could be worked out. He felt that the Town should not make any kind of compromise and urged the Board to deny the request.

Franklin K. Hoyt, 75 Grove Street, also opposed the request due to the serious traffic problems it will create in Wellesley Square, the lack of sufficient space for parking, and he felt that if the request is allowed, it will be a disservice to the citizens of the entire Town.

Robert B. Grossman, 85 Grove Street, suggested that the Board of Appeal look at some of the subsidized housing in Boston that are deteriorating and questioned the length of time the property involved would be maintained by the present owners.

William R. Roop, III, Vice President, responded to the issues raised during the hearing and covered the following items: Safety of School Children, Automobile Ownership, Height and Density Reduction, Land Value/Economic Feasibility, Zoning By-law, Legality of Age Limitation, Utilities, Protection of Fuller Brook, Flexibility, 2 Bedroom Units, "Inevitable Criminal Element," Statutory Criteria, Environmental Protection, Control of Details, Elevation of Surrounding Buildings, Recommendations of the Low and Moderate Income Housing



Study, Size of Parking Space, Town Meeting Approval, Deterioration, Pedestrian Saturation, and a general summary. He specifically stated that Wellesley Glen Associates is prepared to modify its original request and proposes to construct two buildings not to exceed forty-five (45) feet in height. It will eliminate the sixth floor and reduce the proposed units from 178 to 160. This change, it was stated, would not only reduce the density originally proposed but would mean the height of the building would be considerably lower than the roof of the Wellesley Green, 40 Grove Street and Bardwell Auditorium. He further stated that it would be economically unfeasible, in the case of low and moderate income housing, to comply with the existing Wellesley Zoning By-law.

Written reports were received from the Board of Selectmen, Planning Board, Board of Public Works, School Department, Wellesley Chapter, of the American Association of Retired Persons, Inc., the Sixty Plus Club of Wellesley, Council on Aging and the Wellesley Housing Authority, and all are herein incorporated by reference.

Five letters favoring the request were received and nineteen letters opposing the request were received. Petitions signed by approximately five hundred persons opposing the request were submitted and petitions signed by approximately forty-five persons favoring the request were submitted.

A traffic Impact Study of Proposed Senior Citizen Housing was submitted by Wellesley Glen Associates which had been prepared by

Mr. Roe P Hendrick. Said study in its conclusion stated, "It is obvious from the foregoing, that neither parking or traffic generated by Wellesley Glen Associates should be a problem in the immediate vicinity of the site. With both Grove Street and Cameron Street available to serve the local traffic circulation needs of residents at Wellesley Glen, unnecessary travel through Wellesley Square will be eliminated. After a careful review of all pertinent factors enumerated above, it is the considered professional opinion of the Consultant that the development of 160 units of elderly housing proposed for Wellesley Glen would not create any undue traffic hazard or other traffic impact."

Statement of Facts

The property involved which contains 158,463 square feet, is located within an Educational District, between Grove Street and Cameron Street. It surrounds a parcel of land containing 18,697 square feet on which stands a brick building, known as Bardwell Auditorium. The parcel of land and building are being retained by Dana Hall Schools, the present owner of the entire parcel. The petitioner has entered into an agreement to purchase the property involved provided approval is obtained from this Board to construct Low and Moderate Income Housing. The petitioner's application requested a Comprehensive Permit to construct low and moderate income housing, under the provisions of Chapter 774, Acts of 1969, Mass. General Laws, Chapter 40 B, Sections 20-24, for 178 units, 106 one-bedroom and 72 two-bedroom units, within two six-story

buildings. At the hearing the petitioner amended the request by reducing the number of units from 178 to 160, to be constructed in two five-story buildings, not to exceed a height of forty-five feet. The petitioner stated that it made a study of the Town's needs and requested the Board's approval for the proposed complex to be used for elderly housing. This type of housing is not permitted within the District in which the property involved is located under the Zoning By-laws of the Town.

Preliminary plans of the buildings were submitted as well as site development plans and specifications. The site plans showed the location of the two buildings on the lot, the parking spaces to be provided, the entrances and exits onto Grove Street and Cameron Street, as well as preliminary locations of sewer, water and drain pipes.

A set of plans submitted were given to the Board of Selectmen, Planning Board, Board of Public Works and the Building Inspector, with the request that they review the plans and send this Board their written reports. Reports from all those requested have been received.

#### Decision

Wellesley Glen Associates, a limited dividend partnership, the general partners of which are Alexander H. McNeil and J. Virginia McNeil, husband and wife, both of Dedham, Massachusetts, seek to obtain a comprehensive permit under the authority of Massachusetts General Laws Chapter 40B, Sections 20-24.



The Board of Appeal has carefully considered the application for the comprehensive permit, with the supporting data and plans, together with the information, statements and presentations at the public hearings, and our own investigation.

The area proposed to be developed for low and moderate income elderly housing contains 158,465 square feet of land, approximately 3 3/4 acres, located on Grove Street, and is in what is presently, and has been for a number of years, an educational zone. Access to the parcel is gained directly from Grove Street, a public way, and from Cameron Street also a public way, by a so-called paper street, which for a number of years has been used almost exclusively by children attending Hunnewell School, and other pedestrians. On the east side of the parcel, lies a strip of land of the Town of Wellesley sandwiched between and subject land and Cameron Street.

Massachusetts General Laws Chapter 40B, Sections 20-24, is otherwise designated as Chapter 774 of the Acts of 1969. This legislation has been passed upon by the Supreme Judicial Court on many occasions, and in passing upon the constitutionality of the amendments, as enacted in 1969, the Court said: "Our construction of C.774 does not mean that the board must automatically grant comprehensive permits in all cases, where the Community has not met its minimum housing obligation as it is specifically defined in Section 20. The statute merely prevents the board from relying on local requirements or regulations, including applicable zoning by-laws and ordinances which prevent the use of the site

for low and moderate income housing, as the reason for the board's denial of the permit or its grant with uneconomic conditions. In cases where the locality has not met its minimum housing obligations, the board must rest its decision on whether the required need for low and moderate income housing outweighs the valid planning objections to the details of the proposal such as health, site design, and open spaces. If the regional need for such housing outweighs these objections, the board must override any restrictive local requirements and regulations which prevent the construction of the housing and grant the comprehensive permit. However, the municipality's failure to meet its minimum housing obligations, as defined in Section 20, will provide compelling evidence that the regional need for housing does, in fact, outweigh the objections of the proposal."

The Court further stated that the standards to be applied by a Board of Appeals in passing on the question of issuance of such a permit (as herein applied for) are whether the grant of a permit is reasonable and consistent with local needs, and whether any conditions imposed on the permit are uneconomic. A Board of Appeals need not over-ride local requirements where low and moderate income housing is in excess of ten percent of the housing units reported in the last decennial census, or, such housing exists on sites comprising 1 1/2 % or more of the total land area zoned for residence, commercial or industry (exclusive of public land)

or the application would result in the commencement of construction of such housing on sites comprising 3/10 of 1% of such land or ten acres, whichever is larger, in any one calendar year.

It is a fact that the Town of Wellesley, in applying the standards of C. 774, as construed by the Supreme Judicial Court, has not met the minimum low and moderate income elderly housing requirements. As of the last decennial census, it is estimated that there were 7,844 housing units in Wellesley, and there were 178 subsidized housing units utilized for low and moderate income elderly housing. As of this date, there has been constructed, by public authority, an additional 57 units. By the unit standard, the Town falls short of its statutory requirement by over five hundred units. The Town covers a land area of 6,432 acres. Of this total, 1,505 acres are dedicated to, owned by, or used for roads, municipal purposes, and state agencies. The net land area, for purposes of C. 774 application is 4,927 acres. The area devoted to low and moderate income elderly subsidized housing is approximately twenty acres; thus, by the land use standard, the Town falls short by about fifty-four acres.

There presently exists in Wellesley a need for additional housing units for low and moderate income elderly families. The question does arise, are there any areas or lots in the Town that could be used to satisfy this need in whole or in part? There are over 125 acres of land potentially available for such housing, many sites however, being less than two acres in size. There are other



parcels ranging from 2 to 5 acres in size, of which the parcel proposed for development is one. The willingness, or lack of it, of owners of such presently vacant land to sell such land for low and moderate income housing purposes and for subsidized housing, for a reasonable price, can be a limiting consideration.

Low and moderate income elderly housing should be so located that the occupants can walk to or use public transportation to reach employment, to shop for necessities and other goods, to utilize cultural and recreational facilities, and have access to services such as medical, financial, religious and personal.

The Wellesley Zoning By-law was first adopted in 1925. For purposes of the by-law, the Town is divided into classes of districts as shown on the Zoning Map of the Town of Wellesley. From time to time that by-law and map have been amended. There are fifteen districts, designating residential, educational, business, industrial, transportation and conservation classifications. This zoning by-law was adopted, and from time to time amended, for the purpose of promoting the health, safety, convenience, morals and welfare of the people and to encourage housing for persons of all income levels, and has regulated and restricted, to those ends, the height, number of stories, size of buildings, size and width of lots, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of the population and the location and use of buildings and land for trade, industry, agriculture, residence, and education. This zoning by-law was not and is not aimed at transients and involves

no procedural disparity inflicted on some, but not on others, nor does it deprive any fundamental right, but rather is addressed to family needs. The values it represents are spiritual as well as physical, asthetic as well as monetary. Its evolution has been a guideline to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.

The parcel on which the proposed housing is sought to be constructed, lies between a heavily traveled town designed road and an elementary school building housing young people of kindergarten age to grade four age. It is presently open space of substantially even topography. To the south side of the parcel is a conservation district through which runs a natural waterway. To the north side is the business district of the Town. In making its decision, this Board has considered the need to protect the health and safety of the occupants of the proposed housing, as well as the residents of the Town, promotion of building design in relation to the surroundings, and preservation of open spaces.

It has been presented and argued to this Board that due to the land cost of the parcel to be developed, the project would be economically infeasible unless a minimum number of 160 units are constructed, in the design of the structures as proposed. It is human experience, however, that value of land can be determined only with respect to the permitted use of land. This Board has found nothing in any of the legislative history of Chapter 774 of the Acts of 1969,

which was reviewed at great length by the Supreme Judicial Court in the Hanover and Concord cases, or in the policy underlying the statute amendments, which justifies an application of the statutory definition of the term "uneconomic". To agree to purchase land for a large sum from a seller that cannot utilize that land, when considered in light of the permitted uses, apart from the application of the statute, is to adopt a rationale that subverts the intent of the statute as a tool for providing low and moderate income elderly housing.

It is the opinion of the Board that a modification of the proposed project, taking into consideration the health, safety and welfare of Wellesley residents, and those who would become Wellesley residents, is consistent with the needs of the Town. On the human level, as well as the humane level, the need for additional low and moderate income housing in Wellesley is required.

Therefore, a majority of this Board grants a comprehensive permit pursuant to Massachusetts General Laws, Chapter 40B, Sections 20-24 to the applicant, Wellesley Glen Associates, Alexander H. McNeil and J. Virginia McNeil, General Partners, to construct no more than two residential structures on the subject location, each to be of no greater height than forty-five feet above ground level, containing in total 125 units, subject to the following terms, conditions and safeguards:

1. The project occupancy is to be limited solely to families of low and moderate income as that term is defined in applicable laws



and regulations but in no event shall elderly occupancy of the units (age 62 and above) be less than 80% of the total number of units. Provisions for handicapped persons shall be made in accordance with applicable statutory requirements and regulations as set forth in Mass. General Laws Chapter 22, Section 13A and amendments thereto and the Department of Housing and Urban Development regulations.

2. Selection of qualified tenants for the units shall be subject to the supervision and final determination of the organization in Wellesley which concerns itself with the care and needs of senior citizens of Wellesley, in accordance with Condition 1; this organization is presently called the Council on Aging. The organization shall be provided with all applications for occupancy in a timely manner to ensure proper evaluation and shall communicate its selection to the applicant or its successor. To the extent permissible under applicable law, preferences shall be given to residents of Wellesley, parents of residents of Wellesley, and former residents of Wellesley, in that order of preference.

3. No voluntary transfer of ownership of the premises during the first twenty years following approved completion of construction shall be permitted without prior approval of the Board of Appeals (except to an entity owned and/or controlled by the Applicant), reasonable approval not to be withheld. In the event that ownership of the premises is to be transferred or contemplated to be transferred, the Wellesley Housing Authority and the Town Of Wellesley shall be

given the right of first refusal. In the event that the general partners of the Wellesley Glen Associates shall separate or not continue for any reason in said partnership, any transfer shall be made only with the approval of the Wellesley Board of Appeals, said approval not to be withheld unreasonably.

4. The name of the project shall be changed prior to commencement of construction to avoid any confusion between this project and any other project, area, or location with regard to emergency conditions and situations.

5. Within twelve (12) months of the date of the filing of this decision with the Wellesley Town Clerk:

a. All necessary public financing for the project, and evidence thereof submitted to the Board of Appeal, shall be obtained;

b. Evidence satisfactory to the Board of Appeals that the applicant is a limited dividend entity empowered to act and qualified to undertake a project pursuant to the provisions of Chapter 121A of the Massachusetts General Laws shall be submitted to the Board of Appeals; and

c. In the event that the applicant (or at any time any successor) shall qualify under Chapter 121 A of the Massachusetts General Laws or any other similar legislation which provides that the applicant (or any successor) be exempt from paying real estate taxes on the development or any part thereof, the Applicant shall, enter into a contract or agreement with the Town of Wellesley, acting

through the Board of Selectmen or other appropriate and authorized Board, to pay to the Town of Wellesley such annual amounts, as provided in Section Six A (S. 6A) of said Chapter.

In the event the Applicant reasonably determines that such financing and evidence thereof will not be obtained within said time period and has exercised good faith efforts to obtain same, the Applicant may apply to the Board of Appeals for an extension of time up to three (3) months; however, in no event shall the time period for obtaining financing be longer than fifteen (15) months from the date of the filing of this decision with the Town Clerk. In the event said financing and evidence thereof are not obtained within the aforementioned time period, the Board reserves the right to review this condition, upon one (1) month notice by the applicant.

6. Construction of the project shall be commenced within six (6) months from the date of the obtaining of all necessary financing but in no event later than eighteen (18) months from the date of the filing of this decision with the Wellesley Town Clerk. In no event shall construction commence until all necessary financing has been obtained. Construction of the project shall be completed within eighteen (18) months from the date of the commencement of said construction. In the event construction is not commenced and/or completed within the time frames set forth above unless extension for good cause has been granted by the Board of Appeals, the said comprehensive permit shall automatically terminate and be of no further legal effect whatsoever.



7. No construction, including site development, drainage, or foundations shall begin until detailed construction plans and specifications, substantially in accordance with the preliminary plans dated September 14, 1976, as revised, shown to the Board of Appeals, shall have been approved by the State or Federal agency providing construction funds for the project and by the Wellesley Town Engineer, Building Inspector, Wiring Inspector, Plumbing and Gas Inspector, and the Board of Health.

8. A site landscape and topography plan shall be prepared and submitted to the Board of Appeals for review and approval prior to construction, said plan to show trees to be retained, trees to be removed and proposed new plantings to be placed.

9. All material used for backfill shall be approved in advance by the Building Inspector; all interior walls of residential units shall be sound proofed, sound deadening materials shall be approved by the Building Inspector in accordance with applicable building code.

10. No blasting shall be allowed during construction except with the prior approval of the Fire Department and Board of Appeals, based on plans submitted showing the results of test boring studies.

11. All utility lines including the fire alarm systems shall be placed underground. The applicant owner shall assume all costs of installation of all utilities into and on the site, including tie-in with all municipal lines, water, sewer and electrical.

12. Parking on the interior access driveway shall be prohibited and signs to that effect shall be installed. Maintenance of interior ways, for pedestrian and vehicular travel, shall be at the expense of the applicant; said maintenance shall include snow and ice removal; garbage, trash, and rubbish disposal shall be the responsibility of the applicant.

13. All sanitary disposal facilities installed in said buildings on the site shall be connected to the Town of Wellesley sanitary sewer system in accordance with the requirements of all Town and State codes and regulations; plans therefor shall be approved by the appropriate division of the Wellesley Public Works Department.

14. Final construction plans shall provide space for no less than one hundred forty (140) parking spaces, each space containing no less than 250 square feet. At completion of construction and at the time of occupancy, there shall be no less than one hundred five (105) parking spaces constructed, marked, and ready for use.

15. All drainage from the site shall be so designed and constructed as to meet the following requirements.

a. A detailed plan for handling drainage on the site throughout the entire construction period, and for handling drainage following construction, shall be submitted to and approved by the Town Engineer and the Wellesley Conservation Commission, in accordance with the applicable wetlands statutes.

b. All roof drainage shall be piped into the on-site storm drain system.

c. All paved areas including the parking area, access driveway and interior roadways shall be graded and provided with catch basins and drains to prevent runoff from the paved areas onto the grass areas and that portion of the premises located in the conservation district.

d. Sloped paving, Cape Cod berms or other similar treatment shall be installed around the paved parking and road areas.

e. No silt from soil erosion during the construction period and after completion of the construction phase shall be permitted to enter on Cameron Street, Fuller Brook or abutting properties.

16. Fire safety devices and equipment shall be installed as follows:

a. A master box on a pedestal on the access driveway; the location of same to be established by the Fire Department.

b. Interior fire alarm system in both buildings to be connected to the master box by underground ducts;

c. Audible alarms in each building; a flashing red light on top of each building tied to the audible alarm and an annunciator panel in each building to show origin of alarm by floor and apartment location;

d. The number of hydrants and locations thereof to be designated by the Wellesley Fire Department.

17. Prior to construction, the applicant-owner shall:

a. Obtain adequate insurance (including comprehensive



general liability coverage) to insure against claims resulting from damages to properties abutting or near the development. The amount of said insurance shall be determined by the Board of Appeals prior to construction.

b. Secure all required determinations under Mass. General Laws Chapter 131, Sections 40 and 40A from the Wellesley Conservation Commission.

c. Provide the Board of Appeals with satisfactory evidence that the proposed drainage and sewerage disposal systems, utility lines and conduits, access roads and walks including location, grade and width of any entrance from the project on to Grove Street or any access to or from the project from any other public way and location of buildings have been approved by the Town Engineer, and each appropriate local department, Board or Commission.

18. The following procedures and requirements shall be adhered to:

a. A building permit application on the Town of Wellesley's Form shall be submitted for each building.

b. Plot plans as required by the Building Code shall be submitted with the Application.

c. Complete and final architectural and construction plans for each building showing that the proposed structures comply with all requirements of the State Building Code, as well as any Town Building Code requirements, shall be submitted; said plans shall include test boring diagrams and charts.

d. All necessary plumbing, gas and electrical permits shall be applied for and obtained.

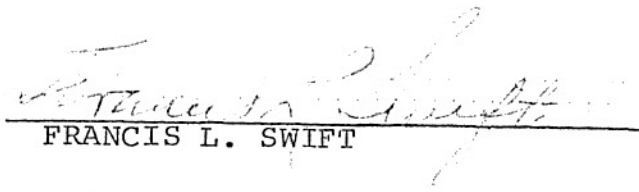
e. All permit fees as per the Town Permit Fee Schedule shall be paid.


f. Periodic notification of the progress of the work shall be given as directed by and to the Inspector of Buildings, Inspector of Plumbing and Gas, and Inspector of Wires, so that inspection of the construction can be made to determine compliance with the appropriate codes involved.

19. The applicant shall provide a copy of as built plans, as certified, to the building inspector and this Board prior to the issuance of final occupancy permit.

20. In the event that any disagreement arises between the Applicant and local officials as to approvals required above and as to compliance with any specifications herein, the Board of Appeals shall decide the matter and its decision shall be final.

Mr. F. Lester Fraser does not concur with the decision of the majority of the Board.

  
FRANCIS L. SWIFT

  
WILLIAM O. HEWETT